

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

OLAWUNMI HASSAN,

Cross-Complainant and Appellant,

v.

BLACKBURNE AND SONS REALTY  
CAPITAL CORPORATION,

Cross-Defendant and Respondent.

H042207

(Santa Clara County

Super. Ct. No. CV219216)

Respondent Blackburne and Sons Realty Capital Corporation (Blackburne) agreed to lend appellant Olawunmi Hassan \$1,211,000. Hassan signed a promissory note that was secured by a deed of trust. Hassan defaulted on the loan. After Blackburne attempted to foreclose, Hassan sought bankruptcy protection and issues regarding the loan were litigated in bankruptcy court. After the bankruptcy action settled, Blackburne filed this action for the appointment of a receiver to enforce the assignment of rents provision in the deed of trust, and Hassan filed a cross-complaint. Hassan appeals from the judgment entered after the trial court granted Blackburne's motion for summary judgment on Hassan's third amended cross-complaint. We conclude that the record on appeal and Hassan's briefs are woefully inadequate to permit review. We are therefore compelled to rely on the presumption of correctness and will affirm the judgment.

## **I. STATEMENT OF FACTS**

In 2006, Blackburne<sup>1</sup> agreed to lend Hassan \$1,211,000. Hassan signed a promissory note that was secured by a deed of trust and assignment of rents on two commercial properties Hassan owned located at 167 and 187 S. Main Street in Milpitas (jointly the Property). Hassan operated a business known as Ola's Coffee, Tea, and Equipment, Inc. at one of the properties and leased the other property to a restaurant.

Hassan subsequently defaulted on the loan. In January 2008, Blackburne began a non-judicial foreclosure. In May 2008, Hassan filed for Chapter 7 bankruptcy protection. Three months later, Hassan dismissed his first bankruptcy proceeding and filed a "Chapter 11 reorganization bankruptcy" action (case No. 08-54468). The automatic stay in that case prevented a scheduled foreclosure sale from taking place. Shortly thereafter, the parties entered into a forbearance agreement, which was approved by the bankruptcy court, under which Hassan agreed to start making payments of \$12,815.38 per month. According to Blackburne, the parties entered into that agreement "to provide Hassan time to sell or refinance the property."

In October 2009, Blackburne alleged that Hassan had breached the forbearance agreement or that the automatic stay did not apply, resumed foreclosure proceedings, and obtained title to the Property by making a credit bid at a trustee's sale. Hassan alleged that the trustee's sale was a breach of the forbearance agreement and filed an adversary proceeding in bankruptcy court (case No. 09-05307, hereafter Adversary Proceeding) to address the allegedly unlawful foreclosure sale and re-establish title to the Property. The bankruptcy court found that Hassan had not defaulted on the forbearance agreement and that Blackburne therefore did not have the right to foreclose.

---

<sup>1</sup> When Hassan signed the promissory note, Blackburne was known as "Blackburne & Brown Mortgage Co., Inc." Hassan refers to respondent as "Blackburne and Brown" in his briefing.

In September 2010, the parties went to mediation, and, as a result thereof, entered into an agreement to settle “all matters concerning the Adversary Proceeding and Foreclosure.” Their settlement agreement modified the terms of the promissory note and provided, among other things, that: (1) Blackburne would rescind the foreclosure; (2) if Hassan defaulted, Blackburne could commence foreclosure proceedings “free of the automatic bankruptcy stay” in the Adversary Proceeding or any other case, “or any injunction imposed by a state or federal court”; (3) Blackburne would cooperate with Hassan to clear title to the property to the extent that Blackburne is responsible for any cloud on title; and (4) Blackburne was entitled to rents on the Property until the effective date of the agreement. The settlement agreement required bankruptcy court approval and provided that its “Effective Date shall be the date of the entry of the Bankruptcy Court order approving this settlement . . . .”

In January 2011, the bankruptcy court denied Hassan’s motion to approve the settlement agreement because of overbroad language in the provision that permitted Blackburne to commence foreclosure proceedings free of any automatic stay or injunction imposed by any court. The parties therefore signed an addendum to the settlement agreement that addressed the bankruptcy court’s concerns. The settlement agreement, as amended, was approved by the bankruptcy court on April 19, 2011. Under the settlement agreement, Hassan was required to pay off the promissory note within nine months of the date the court entered its order approving the settlement agreement or by January 19, 2012.

On April 21, 2011, two days after the settlement agreement was approved, Blackburne recorded a rescission of the trustee’s deed, which purportedly rescinded the

trustee's sale and transferred ownership of the property back to Hassan. In August 2011, Blackburne recorded an amended rescission of the trustee's deed.<sup>2</sup>

Nine days before the deadline to pay off the note, Hassan filed a motion in the bankruptcy court to extend the time to enforce the settlement agreement. He alleged that his inability to pay off the loan on time was due to breaches of the settlement agreement by Blackburne, which according to Hassan included failing to promptly rescind the prior trustee's sale, failing to cooperate to remove clouds on the title to the Property that Blackburne was responsible for, failing to follow through on its eviction of the restaurant tenant, and failing to pay property taxes, liens and penalties that Hassan alleged Blackburne was responsible for. About this time, Blackburne filed a motion for an order terminating the automatic stay and authorizing it to foreclose on the Property. The bankruptcy court denied Hassan's motion, granted Blackburne's motion, and later denied Hassan's motion for reconsideration. Hassan did not appeal the bankruptcy court's orders.

## **II. PROCEDURAL HISTORY**

According to Blackburne's brief, it filed this action in February 2012 to "obtain the appointment of a receiver to collect the rents [on the Property] until such time as Blackburne was able to complete its nonjudicial foreclosure . . . ." A receiver was appointed in February 2012. Hassan appeared in the state court action and was initially self-represented. After the state court action was filed, Hassan filed a fourth action in bankruptcy court (case No. 13-51643). In June 2013, the bankruptcy court granted Blackburne's motion for relief from the automatic stay so that it could proceed with its foreclosure against the Property.

---

<sup>2</sup> In his declaration in opposition to the motion for summary judgment, Hassan alleged both rescissions were "fake" because they did not contain the correct property description.

Blackburne foreclosed on June 20, 2013. In July 2013, the receiver filed a motion seeking approval of her final report and accounting. Three days before the hearing on the receiver's motion, Hassan filed a late opposition to the motion, and the trial court continued the hearing to October 10, 2013.

In September 2013, Hassan filed a cross-complaint. Hassan then obtained counsel, who filed amended cross-complaints, to which Blackburne demurred. The operative pleading is Hassan's third amended cross-complaint, which alleges 10 causes of action: wrongful foreclosure, breach of contract, breach of the covenant of good faith and fair dealing, slander of title, declaratory relief, quiet title, fraud, negligence, negligent interference with contract, and a request for an accounting.

In October 2013, the court granted the receiver's motion, terminated the receivership, and ordered the Property turned over to Blackburne. Blackburne subsequently dismissed its complaint. In August 2014, Blackburne filed a motion for summary judgment, which argued that Hassan's entire third amended cross-complaint was barred by res judicata, collateral estoppel, or judicial estoppel since each of Hassan's claims was premised on his contentions that Blackburne breached the settlement agreement or failed to properly rescind the 2009 foreclosure as required by the settlement agreement.<sup>3</sup> The motion was originally scheduled to be heard on November 6, 2014.

In September 2014, Hassan's attorneys filed a motion to be relieved as counsel, which the trial court granted in October 2014. The record suggests that at all times thereafter, Hassan has been self-represented. Hassan later obtained an order continuing the hearing on the motion for summary judgment to January 29, 2015. At that hearing, the trial court concluded that the claims in the third amended cross-complaint were barred under the doctrine of collateral estoppel and granted Blackburne's motion for summary

---

<sup>3</sup> The record on appeal does not include Blackburne's moving papers. This description is from the trial court's order granting the motion.

judgment. Hassan subsequently made a motion for reconsideration and a motion to file a fourth amended cross-complaint. The trial court denied both motions.

According to the register of actions,<sup>4</sup> the court entered a judgment of dismissal on March 27, 2015, and Blackburne gave notice of entry of judgment on April 7, 2015. (The record does not contain a copy of either the judgment or the notice of entry of judgment.) Hassan timely appealed.<sup>5</sup>

### **III. DISCUSSION**

We begin by addressing two contentions in Blackburne’s respondent’s brief, because they resolve this appeal. Blackburne urges us to affirm the judgment because Hassan has failed to explain alleged trial court error and has failed to provide a complete record. We conclude Hassan has not presented adequate legal arguments with citations to authority that persuade us that the trial court erred when it granted summary judgment. This problem is compounded by the fact that the record on appeal is inadequate for this court to review the judgment. We therefore rely on the presumption of correctness and affirm the judgment.

---

<sup>4</sup> On our own motion, we take judicial notice of the trial court’s on-line register of actions. (Evid. Code, §§ 452, subd. (d); 459.)

<sup>5</sup> The notice of appeal states that the appeal is taken from a judgment entered on January 29, 2015 “after an order granting a summary judgment motion.” But January 29, 2015, was the date of the order on the motion for summary judgment. The judgment was entered on March 27, 2015. Since Hassan filed his notice of appeal on March 30, 2015, three days after the judgment was entered, we deem the appeal to have been taken from the judgment, not the order granting the motion for summary judgment. (*Mukthar v. Latin American Security Service* (2006) 139 Cal.App.4th 284, 288 & fn. 4; *Dominguez v. Financial Indemnity Co.* (2010) 183 Cal.App.4th 388, 391, fn. 1.) The notice of appeal was timely filed after the judgment was entered, but before Blackburne gave notice of entry of judgment.

***A. Failure to Provide Reasoned Argument with Citations to Legal Authority that Demonstrates that the Trial Court Erred***

One of the most fundamental rules of appellate review is that an appealed judgment or order is presumed to be correct. “ ‘All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 (*Cahill*).) As the appellant, Hassan has the burden of overcoming the presumption of correctness. (*Cahill, supra*, at p. 956; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.) That burden includes providing this court with reasoned argument and citations to authority on each point raised. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368 (*Niko*); *Cahill*, at p. 956.) When the appellant asserts a point but fails to support it with reasoned argument and citations to authority, the appellate court may treat it as waived or forfeited, and pass it without consideration. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; see, e.g., *Taylor v. Roseville Toyota, Inc.* (2006) 138 Cal.App.4th 994, 1001, fn. 2 [contention forfeited where it is “merely asserted without argument or authority”].) “One cannot simply say the court erred, and leave it up to the appellate court to figure out why.” (*Niko*, at p. 368.) This rule applies even when the appellate court reviews the matter de novo, including in summary judgment appeals. Although we review the trial court’s decision independently, the scope of our review is limited to those issues that “have been adequately raised and are supported in [the appellant’s] brief.” (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.)

Hassan states the issue on appeal is whether Blackburne was entitled to summary judgment when Hassan “had a material issue of fact, after a foreclosure proceeding,” but he does not state what that disputed issue of material fact was. In his statement of facts, he complains generally that the trial court “erred in granting them summary judgment,” without stating any basis for his claim of error. As we have explained, Hassan cannot

simply say that the trial court erred, and leave it up to this court to figure out how or why. (*Niko*, *supra*, 144 Cal.App.4th at p. 368.)

Hassan complains of acts by Blackburne that were the subject of the litigation in bankruptcy court and error by the bankruptcy judge. But Hasan did not appeal the bankruptcy court's orders and those orders are not before this court. This appeal challenges the state court's judgment based on its order granting summary judgment on Hassan's third amended cross-complaint. Later, in what sounds like a prayer in a complaint, Hassan states that he is "now seeking the overage from the illegal sale of the properties," unjust enrichment, and punitive damages totaling \$2.34 million. This is followed by almost five pages of briefing—without citations to legal authority—about predatory lending that Blackburne claims was plagiarized from two sample complaints available on the Internet. Regardless, this portion of the opening brief has no bearing on the question whether the trial court properly granted summary judgment on the basis of collateral estoppel.

The next section of the opening brief bears the heading "The Standard for Injunctive Relief is Satisfied," and generally briefs rules regarding temporary restraining orders and preliminary injunctions, with citations to a Nevada statute and a federal district court case from Nevada. This is followed by a little over a page of argument that resembles a complaint requesting declaratory relief. The opening brief does not mention the orders denying Hassan's motion for reconsideration or his motion for leave to file a fourth amended cross-complaint. The words "collateral," "estoppel," "reconsideration," and "leave" do not appear anywhere in Hassan's opening brief.

For these reasons, we conclude that Hassan's opening brief is woefully inadequate and that he has failed to overcome the presumption that the judgment is correct with reasoned argument and citations to legal authority.

After Blackburne filed its brief, which asserted that Hassan's brief was inadequate to permit review, Hassan attempted to rectify the problem by including argument



regarding the propriety of granting summary judgment in his reply brief. Points raised for the first time in a reply brief will not be considered, unless the appellant presents a good reason for failing to present them before. (*Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 761, fn. 4.) Since Hassan offers no reason for failing to raise these points before, we will not consider them.<sup>6</sup>

***B. Failure to Provide an Adequate Record to Permit Review of the Judgment***

Appellate courts have no independent knowledge of the cases brought before them for review. A “record” of the lower court proceedings must therefore be prepared, which enables the appellant to demonstrate the claimed error and facilitates the appellate court’s review. (Eisenberg, et al., Cal. Practice Guide: Civil Appeals & Writs (The Rutter Group 2018) ¶ 4:1, p. 4-1, citing *Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498-499 [where appellant “woefully failed” to provide adequate record, appellate court declined his “invitation to independently acquire” trial court documents, stating the appellant “had adequate time to compile a complete record . . . and we will not take it upon ourselves to fulfill his responsibilities”].)

“[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment. [Citations.] ‘This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.’ ([Citation]); see Cal. Const., art. VI, § 13.) ‘In the absence of a contrary showing in the record, all presumptions in favor of the trial court’s action will be made by the appellate

---

<sup>6</sup> Hassan’s reply brief essentially argues that Blackburne did not meet its initial, prima facie evidentiary burden on summary judgment. Even if we were to consider the arguments in his reply brief, as explained in the next section, the record Hassan has provided is inadequate to review them, since it does not include Blackburne’s moving papers.

court. “[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.” ’ [Citation.] ‘ “A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.” ’ [Citation.] ‘Consequently, [the appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].’ [Citation.]” (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609.)

### ***1. Contents of Record on Appeal***

We begin by describing what is in the record and what is missing from the record. According to the register of actions, the documents filed in support of Blackburne’s motion for summary judgment included: (1) a notice of motion, (2) a memorandum of points and authorities, (3) Blackburne’s separate statement of undisputed material facts, (4) the declarations of Angela Vannucci and Mark Isola, (5) a request for judicial notice, and (6) an appendix of evidence in support of the motion. None of these documents are in the record on appeal.

Hassan’s opposition to the motion for summary included a memorandum of points and authorities, his separate statement in opposition, a declaration, a request for judicial notice, and his exhibits in opposition to the motion. His declaration, request for judicial notice, and exhibits are in the record, but his separate statement and memorandum of points and authorities are not.

Blackburne filed papers in reply to Hassan’s opposition to the summary judgment motion, including a memorandum of points and authorities and objections to evidence. Blackburne’s reply papers are not in the record on appeal. In addition, the record does not contain a reporter’s transcript of the hearing on the motion for summary judgment. Also missing are the papers in support of and in opposition to Hassan’s motion for

reconsideration and his request to file a fourth amended cross-complaint. The only thing we have regarding those motions is the court's order denying them.

In summary, the only documents in the record are Hassan's declaration, request for judicial notice, and evidence in opposition to the motion for summary judgment, and the court's order granting summary judgment. Other than the trial court's description of the motion in its order, the record does not reveal the grounds, legal authority, or evidence Blackburne relied on in its motion for summary judgment.

## ***2. Procedural History Regarding Preparation of Record on Appeal***

In reviewing this case, we also consider Hassan's efforts to procure the record on appeal. Hassan filed his original notice designating the record on April 29, 2015. He filed an amended notice designating the record on August 7, 2015, and a second amended notice on September 11, 2015.<sup>7</sup> In each of his notices, Hassan designated a clerk's transcript as the record of the documents filed in the superior court. When using a clerk's transcript, the notice designating the record must identify each document designated "by its title and filing date or, if the filing date is not available, the date it was signed." (Cal. Rules of Court, rule 8.122(a)(1).)<sup>8</sup>

Each of Hassan's notices designating the record asked for: (1) "Motion Summary Judgement/Adjudication and Order" filed on November 6, 2014; and (2) "Motion Summary Judgement/Adjudication" filed on January 29, 2015. But Blackburne's motion for summary judgment and other papers in support of the motion were filed on August 15, 2014, not November 6, 2014 or January 29, 2015. Thus, Hassan designated the wrong filing date for the papers in support of the motion for summary judgment. He

---

<sup>7</sup> The amended notices designating the record added documents filed on June 9, 2015; July 11, 2015; and September 2, 2015, all of which related to Blackburne's motion for attorney fees. The trial court denied Blackburne's motion for attorney fees and that order is not at issue on appeal.

<sup>8</sup> All undesignated rules citations are to the California Rules of Court.

also failed to specifically identify each document in support of the motion by its title, or even the type of document. The trial court file contains more than 330 documents. Since Hassan represented himself on the motion for summary judgment, he had copies of Blackburne's moving papers and could easily ascertain the titles of the relevant documents. It was up to Hassan to designate the documents he wanted by (1) their correct titles and (2) their filing dates or the dates they were signed (rule 8.122(a)(1)) and not leave it up to the trial court clerk to search the court's large file to find documents that were not properly described or to guess what Hassan wanted.

There are also problems with Hassan's designation of his papers in opposition to the summary judgment motion. Hassan designated: "Motion Against MSJ, Declaration, Pleadings" filed January 14, 2015; his request for judicial notice; and his exhibits in opposition to the motion for summary judgment. Hassan's declaration, request for judicial notice, and exhibits in opposition to the motion are in the record.<sup>9</sup> But Hassan failed to designate specifically, by title, his memorandum of points and authorities and his separate statement in opposition to the motion, and those are not in the record.

Hassan's notices designating the record also asked for: (1) "Motion for Recon. Against MSJ, Decl/Suppl.Del Affid.Pleadings" filed on January 14, 2015; (2) "TAAC#2 with Supl.Decl. and Cahnges [*sic*] from TACC#1 to TACC#2" filed on January 14, 2015; and (3) "Motion for Leave to File, Motion for Reconsideration, TACC#2" filed on March 26, 2015. We understand "TACC#1" to mean Hassan's third amended cross-complaint and, like the trial court judge, we deem "TACC#2" to mean his proposed fourth amended cross-complaint. Hassan's motion for reconsideration and motion for leave to file an amended cross-complaint were filed on February 9, 2015, not January 14 or March 26, 2015 as designated. Thus, Hassan once again provided the wrong filing

---

<sup>9</sup> Although Hassan's opposition papers were filed on January 15, and not January 14, 2015, as designated, this discrepancy did not prevent the clerk from locating and including the documents that Hassan properly described in the record.

dates. Moreover, the titles of the documents he designated are confusing and do not correspond to the titles of the motions in the court's order.<sup>10</sup> Hassan did not designate Blackburne's papers in opposition to his motion for reconsideration or his motion for leave to file an amended cross-complaint or Hassan's reply to that opposition. Since Hassan's opening brief does not assert trial court error related to his motions for reconsideration and for leave to file a fourth amended cross-complaint, or even mention those motions, we shall not consider his efforts to obtain those documents further.

In summary, Hassan's notices designating the record failed to describe several documents by title and provided the wrong filing dates. Thus, the failure to include pertinent documents in the clerk's transcript is due to errors and omissions in Hassan's notices designating the record.

The record on appeal (a 604-page clerk's transcript and five volumes of reporter's transcripts) was filed on February 20, 2018. Hassan filed his opening brief on April 18, 2018. He did not complain of any errors or omissions in the record or attempt to augment the record before filing his brief.

One month later, Blackburne filed its respondent's brief, which argued, among other things, that Hassan failed to meet his burden of demonstrating trial court error because the record was incomplete. On May 29, 2018, eleven days *after* Blackburne filed its respondent's brief, Hassan filed a record omission letter in the trial court under rule 8.155(b)(1). The letter stated that the following documents, among others, were

---

<sup>10</sup> The superior court clerk filed a certificate stating that she searched for and could not locate the "TAAC#2 with Supl.Decl. and Cahnges from TACC#1 to TACC#2." But the order denying Hassan's request to file a fourth amended cross-complaint describes the proposed amended pleading. Either the pleading was lost, or Hassan gave the judge a copy at the hearing that was never filed. The clerk's failure to locate it also illustrates how confusing Hassan's record designation was.

missing: (1) “Motion for Summary Judgement/Adjudication/Orders”; and (2) “Orders and Judgement 3/26/15, 3/27/15, 11/06/14.”<sup>11</sup>

Regarding the summary judgment motion, Hassan’s record omission letter suffers from the same defects as his notices designating the record. It does not specifically identify the document or documents sought by title and does not provide a filing date or the date the document was signed. As for the orders and judgments, the “3/26/2015” order was not omitted from the clerk’s transcript. Hassan did not designate the “3/27/2015” judgment in his notices designating the record. It was therefore not the proper subject of a record omission letter. Hassan did request the “11/06/2014” order in his notices designating the record and that order is not in the clerk’s transcript. But it is not related to the summary judgment motion and therefore irrelevant to the appeal.

On June 1, 2018, this court sent a letter to Hassan advising him that if the trial court did not respond to his record omission letter within 10 days, he should file a formal motion to augment the record (rule 8.155(b)(2)). On June 6, 2018, Hassan filed a motion to augment the record in this court, with a copy of his record omission letter attached. Under Rule 8.155(a)(2), he was required to attach “a copy, if available, of any document or transcript that [he] want[ed] added to the record” to his motion to augment. “If the reviewing court grants the motion it may augment the record with the copy.” (Rule 8.155(a)(2).) “If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.122 and 8.130,” which govern record designation. (Rule 8.155(a)(3).)

---

<sup>11</sup> Hassan’s record omission letter listed documents that were not omitted from the clerk’s transcript. His description of one allegedly “omitted” document is not sufficiently clear to determine what Hassan is referring to. Hassan claimed that documents he designated regarding his motions for reconsideration and for leave to amend were missing, but since he does not brief any error related to those motions, we do not consider those claims further. Hassan also stated that documents he designated on the attorney fees motion were missing. Those documents are irrelevant since he prevailed on that motion and has not raised it as an issue on appeal.

Although Hassan's motion to augment stated that "[c]opies of the documents to be added to the record are attached," the only things attached were copies of two different versions of his record omission letter, only one of which was filed in the trial court. And while Hassan cited rule 8.155(a) and expressly acknowledged the requirement of attaching copies of the documents, he did not attach copies of any documents to his motion to augment. He therefore failed to comply with rule 8.155(a)(2). The only effort he made to identify the documents so as to comply with rule 8.155(a)(3) was to attach a copy of his record omission letter. As we have stated, that letter was defective in several respects. In particular, it did not comply with rule 8.122 by stating the title and filing date of the documents he sought to add to the record. Hassan therefore failed to comply with rule 8.155(a)(3). On June 14, 2018, this court denied Hassan's motion to augment "without prejudice to a further showing that the documents attached were filed as part of the trial court record." Hassan did not make any further effort to augment the record.

On July 13, 2018, in response to Hassan's record omission letter, the trial court filed another 141-page volume of "Clerk's Transcript." This additional material does not include any of the critical documents related to the motion for summary judgment that we have identified as missing from the clerk's transcript.

As for the reporter's transcripts, Hassan's original notice designating the record asked for reporter's transcripts for the hearing on the motion for summary judgment and for the hearing on his motion for reconsideration. But Hassan deleted these requests from his amended notices designating the record. He did not request the reporter's transcripts for either hearing in his record omission letter or his motion to augment. Thus, the failure to provide reporter's transcripts for those hearings was due entirely to choices Hassan made when designating the record.

### 3. *Analysis*

Even when the material sought to be added to the record is proper, or an addition to the record is warranted, there is no absolute right to augment the record, and augmentation lies solely within the appellate court's discretion. (Rule 8.155(a)(1); *Russi v. Bank of America* (1945) 69 Cal.App.2d 100, 102.) Augmentation is not a remedy for negligent record designation. (*Ibid.*) The parties are expected to be diligent in initially preparing an adequate record and in seeking augmentation as soon as an omission is discovered. (Eisenberg, *supra*, ¶ 5:136, p. 5-46, citing *Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826-827, fn. 1, and other authority.) Augmentation is most commonly needed when brief preparation reveals a material omission in the record. (Eisenberg, *supra*, ¶ 5:129, p. 5-45.) In this case, Hassan did not notice the critical omissions from the record while preparing his opening brief and acted only after Blackburne pointed them out in its respondent's brief.

As we have stated, the appellant has an affirmative duty to show error by an adequate record. “[I]n the absence of a required reporter's transcript and other [necessary] documents, we presume the judgment is correct.” (*Stasz v. Isenberg* (2010) 190 Cal.App.4th 1032, 1039; see also *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1002-1003 [appellant's claim considered abandoned where appellant failed to provide a reporter's transcript of relevant proceeding].) Another “ ‘necessary corollary to this rule [is] that a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record [the appellant] provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.’ [Citation.]” (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435.) That is what occurred here. The record consists only of a portion of Hassan's opposition to the motion. We do not have any of the moving papers or Blackburne's reply; and we do not have Hassan's memorandum of points and authorities or his separate statement. Without the separate



statements, we do not know what the factual issues were or whether they were disputed or undisputed. Since Hassan has failed to provide portions of the record that may provide grounds upon which the judgment could be affirmed, we are compelled to affirm it.

As the court stated in *Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364, in “appellate law, there are at least three immutable rules: first, take great care to prepare a complete record; second, if it is not in the record, it did not happen; and third, when in doubt, refer back to rules one and two.” Like the appellant in *Protect Our Water*, Hassan has totally missed the mark by failing to provide an adequate record. In addition, Hassan had multiple opportunities to designate an adequate record, rectify omissions in the record, and augment the record on appeal. Rather than meet his burden of ensuring that the record is adequate for review, Hassan filed an opening brief that does not address the propriety of the court’s order granting summary judgment and sought to augment the record only after Blackburne pointed out the inadequacies of the argument and record in its brief. Moreover, Hassan made no effort to address these points in his reply brief or request any form of relief from his record preparation defaults. It has been more than four years since the notice of appeal was filed and the briefing has been completed. At this late stage, especially in light of the inadequacies of the Hassan’s briefs on appeal, it would be unfair and prejudicial to Blackburne to consider granting any relief on our own motion. Given the deficiencies in Hassan’s briefs and the record, we are compelled to rely on the presumption of correctness in reviewing this appeal.

#### **IV. DISPOSITION**

The judgment is affirmed.

---

Greenwood, P.J.

WE CONCUR:

---

Bamattre-Manoukian, J.

---

Danner, J.

Hassan v. Blackburne and Sons Realty Capital Corporation  
No. H042207